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Attorneys for Plaintiff DOCMAGIC, INC.

UNITED STATES DISTRICT COURT FOR THE  
 NORTHERN DISTRICT OF CALIFORNIA

JL

CV 09

4017

DOCMAGIC, INC., a California  
 corporation,

Plaintiff,

v.

ELLIE MAE, Inc. a California  
 corporation; and DOES 1 through 10,  
 inclusive,

Defendants.

CASE NO.

COMPLAINT FOR:

1. Monopolization and Attempted Monopolization and Antitrust Violations;
2. Violation of the Cartwright Act, Cal. Bus. & Prof. Code §§ 16700 *et seq.*
3. Intentional Interference with Contractual Relationship
4. Interference with Prospective Economic Advantage
5. Unfair Competition Cal. Bus. & Prof. Code § 17200, *et seq.*

DEMAND FOR JURY TRIAL

FAXED

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ORIGINAL

**JURISDICTION**

1  
2 1. This action arises under the provisions of the antitrust laws of the United  
3 States, 15 U.S.C. § 2 *et seq.* This Court has subject matter jurisdiction, under 28  
4 U.S.C. §§ 1331 and 1337, over the federal claims alleged below. This Court has  
5 supplemental jurisdiction, under 28 U.S.C. § 1367, over the state law claims alleged  
6 below.

**INTRADISTRICT ASSIGNMENT**

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9 2. A substantial part of the events or omissions giving rise to the claims set  
10 forth in this Complaint occurred in the City of Pleasanton, County of Alameda.  
11 Specifically, the Defendant resides in the City of Pleasanton. The ePASS Agreement  
12 (defined herein) was entered into, and the obligations arising thereunder were to be  
13 performed, in the County of Alameda, State of California.

**VENUE**

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15  
16 3. Venue is proper in this judicial district pursuant to 28 U.S.C.  
17 § 1391(b)(a) in that all defendants reside in this judicial district.

**THE PARTIES**

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19  
20 4. Plaintiff DocMagic, Inc. ("DocMagic") is, and all times pertinent hereto  
21 was, a California corporation with its principal place of business in the city of Carson,  
22 County of Los Angeles, California.

23 5. DocMagic is informed and believes, and on that basis alleges, that at all  
24 times relevant hereto defendant Ellie Mae, Inc. ("Ellie Mae") was and is a corporation  
25 organized and existing under the laws of the State of California with its principal  
26 place of business in the city of Pleasanton, County of Alameda, California.

27 6. DocMagic does not know the true names and capacities, whether  
28

1 individual, corporate, partnership or otherwise, of defendants Does 1 through 10,  
2 inclusive, and therefore sues these defendants by such fictitious names. DocMagic is  
3 informed and believes, and on that basis alleges, that each of the fictitiously named  
4 defendants is in some manner responsible for the events and happenings referred to  
5 herein, and that at all times mentioned herein, defendants, and each of them, were  
6 acting as the agents, servants, and/or employees of Ellie Mae. When DocMagic  
7 ascertains the true names and capacities of Does 1 through 10, it will amend this  
8 Complaint accordingly.

9 7. DocMagic is informed and believes, and on that basis alleges, that at all  
10 times material to this Complaint, unless otherwise indicated, each defendant was the  
11 agent and employee of all other defendants, and in performing the acts hereinafter  
12 alleged, each was acting within the scope of his or its authority as such agent and  
13 employee and with the permission, knowledge and consent of all other co-defendants  
14 and each of them.

15 8. Ellie Mae and defendant Does 1-10 are sometimes collectively referred  
16 to herein as "Defendants."

17  
18 **FACTS COMMON TO ALL CAUSES OF ACTION**

19 9. Founded in 1988, DocMagic is a provider of mortgage loan origination,  
20 processing and document preparation software. Since its introduction, DocMagic's  
21 flagship product, DocMagic®, has revolutionized the mortgage document industry.  
22 The DocMagic product is an efficient and simple automated mortgage loan closing  
23 document software program that allows mortgage brokers, mortgage bankers and  
24 lenders to easily produce, electronically deliver and/or print error-free mortgage loan  
25 closing documents.

26 10. Among other things, Ellie Mae is a provider of software and services for  
27 the mortgage industry and offers business solutions for mortgage bankers, mortgage  
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1 brokers and lenders. Among the products offered by Ellie Mae is a loan origination  
2 software ("LOS") product known as Encompass, which is a type of software used by  
3 mortgage loan originators in the origination, processing and closing of a mortgage  
4 loan. In addition, Ellie Mae is also an internet platform provider for mortgage loan  
5 brokers through its ePASS Network product.

6 11. Ellie Mae's ePASS Network provides an internet platform for mortgage  
7 brokers, which enable them to build and host their individual consumer websites and  
8 establishes linkages and data transmission capacity through an "electronic bridge"  
9 between the mortgage brokers, lenders, and service providers.

10 12. The ePASS Network takes the highly fragmented mortgage industry and  
11 makes it accessible via one interconnected, electronic network embedded in several  
12 of the industry's most used loan origination systems.

13 13. The ePASS Network has been widely adopted in the mortgage industry  
14 to streamline transactions among the thousands of dispersed entities in the industry.  
15 As a result, the ePASS Network provides electronic connectivity for all key members  
16 of the multi-stepped mortgage transaction, including brokers, lenders, investors, and  
17 servicers.

18 14. Ellie Mae itself describes the ePASS Network as "the mortgage  
19 industry's online transaction platform" and claims that the ePASS Network enables  
20 over 40,000 mortgage companies in the United States to do business online with the  
21 country's leading lenders and nearly 100,000 settlement service providers. Ellie Mae  
22 further claims that the ePASS Network streamlines and automates transactions with  
23 the GSEs (Government Sponsored Entities), forty-five of the nation's leading  
24 wholesale and correspondent lenders, over 88,000 appraisers and 2,200 service  
25 providers including credit, title, flood, insurance, and document providers.

26 15. In or about October 2008, Ellie Mae was issued Patent No. 7,444,302  
27 (the "Ellie Mae Patent") for the ePASS Network entitled "Online Network for  
28



1 Fulfilling Loan Applications from Loan Originators."

2 16. The ePASS Network was launched in 2001 and, according to Ellie Mae,  
3 connects more than 2,000 unique partners. Millions of transactions pass through the  
4 ePASS Network each year. According to Ellie Mae, its Encompass LOS product in  
5 conjunction with the ePASS Network connects 150,000 users to transact more than  
6 \$5 billion in mortgages a month.

7 17. Ellie Mae has boasted that as much as one-third of all mortgage loans  
8 written in the United States passes through the ePASS Network. In addition, Ellie  
9 Mae also claims that: (1) 95% of all mortgage professionals in the United States have  
10 access to the Ellie Mae network of lenders and service providers through its  
11 Encompass LOS; (2) 2.5 million mortgage broker loans were sent to lenders and were  
12 managed through Ellie Mae's infrastructure in the past 12 months; (3) 45% of all  
13 loans transacted in the United States are originated with Ellie Mae software; (4) Ellie  
14 Mae controls 40% of the nationwide market for loan origination software; and (5)  
15 that approximately 50, including 8 of top 10, leading Lenders use Ellie Mae  
16 technology for receiving loan submission data from brokers.

17 18. On or about November 24, 2003, DocMagic and Ellie Mae entered into  
18 an Electronic Bridge Agreement (the "ePASS Agreement"), whereby DocMagic was  
19 included in the ePASS Network in exchange for a fee depending upon the volume of  
20 transactions made by DocMagic through the ePASS Network.

21 19. Pursuant to the ePASS Agreement, DocMagic was provided access to  
22 the ePASS Network until recently when Ellie Mae notified DocMagic of its intent to  
23 terminate the ePASS Agreement. Subsequently, Ellie Mae took drastic steps to  
24 prevent hundreds of current DocMagic/Encompass users from accessing DocMagic  
25 products through unfair and anticompetitive behaviors, including sabotaging its  
26 clients by preventing access to DocMagic through alternative (non-ePASS) web  
27 service calls.

28

20. Ellie Mae currently refuses to provide DocMagic access to the ePASS Network and has been notifying DocMagic's customers of such fact and encouraging them to use Ellie Mae's competing mortgage loan document system.

21. Compounding matters, Ellie Mae now also refuses to permit DocMagic to bypass the ePASS Network and connect to Encompass users electronically through DocMagic's proprietary XL technology. Although, Ellie Mae's Software Development Kit for Encompass ("SDK") was created, in part, to allow Encompass users to connect with third party providers such as DocMagic, Ellie Mae now threatens to bring legal action against DocMagic if an Encompass user makes use of the SDK for the very purpose for which it was designed. In addition, Ellie Mae has recently modified its Encompass license agreement to prohibit Encompass users from using the SDK to transfer data from Encompass to any third party, including DocMagic, thereby bypassing the use of the ePASS Network.

### **FIRST CLAIM FOR RELIEF**

#### **(Monopolization and Attempted Monopolization and Antitrust Violations of Section 2 of the Sherman Act, 15 U.S.C. § 2, pursuant to Sections 4 and 16 of the Clayton Act, 15 U.S.C. §§ 15 AND 26)**

22. DocMagic incorporates the allegations in paragraphs 1 through 19 above, as if set forth fully herein.

23. This claim is brought against Ellie Mae pursuant to Sections 4 and 16 of the Clayton Act, 15 U.S.C. §§ 15 and 26, for injunctive relief, treble damages, and costs of suit, including reasonable attorneys' fees, for Ellie Mae's violation, as hereinafter alleged, of Section 2 of the Sherman Act, 15 U.S.C. § 2.

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**NATURE OF TRADE AND COMMERCE**

24. The trade and commerce involved herein consists of the marketing and provision of internet portals for mortgage professionals to establish linkages and data transmission capacity through an "electronic bridge" between the mortgage brokers, mortgage bankers, lenders and other service providers. As used herein, the term "relevant product market" means an internet portal providing electronic linkages for mortgage loan closing document preparation services. As used herein, the term "relevant geographic market" means the United States.

25. DocMagic is informed and believes, and on that basis alleges, that the relevant product market is \$100 to \$200 million.

26. Ellie Mae operates in interstate commerce and the conduct described herein affects interstate and foreign commerce.

27. DocMagic competes directly with Ellie Mae by virtue of DocMagic being a provider of internet-based mortgage loan closing document preparation services falling within the relevant product market.

28. DocMagic is informed and believes, and on that basis alleges, that Ellie Mae has achieved a dominant market position in the relevant product market by, *inter alia*, misusing the inherent monopoly power flowing from its ePASS Network and the Ellie Mae Patent to which Ellie Mae claims ownership.

29. DocMagic is informed and believes, and on that basis alleges, that, by virtue of its dominant market position and as result of its control over access to the market through its ePASS Network, as alleged hereinbelow, Ellie Mae has achieved and is maintaining and misusing market and monopoly power in the relevant product market.

30. DocMagic is informed and believes, and on that basis alleges, that Ellie Mae is improperly controlling access to the ePASS Network and preventing any suitable workarounds thereto to restrain trade in the relevant product market and in

1 the market for mortgage loan closing document preparation services, to control prices  
2 and distribution of products and/or services in the relevant product market and the  
3 market for mortgage loan closing document preparation services, and to prevent  
4 competitors and prospective competitors from continuing in and/or entering the  
5 relevant product market and the market for mortgage loan closing document  
6 preparation services.

7  
8 **ELLIE MAE'S ATTEMPTED MONOPOLIZATION**  
9 **AND/OR MONOPOLIZATION OF THE RELEVANT MARKET**

10 31. DocMagic is informed and believes, and on that basis alleges, that Ellie  
11 Mae has engaged in and is engaging in a systematic scheme to monopolize and/or  
12 attempt to monopolize the relevant product market.

13 32. DocMagic is informed and believes, and on that basis alleges that Ellie  
14 Mae is using both its dominant market position and its control over access to the  
15 ePASS Network to stifle competition, engage in anti-competitive conduct, and  
16 control the distribution of products and/or services in the relevant geographical  
17 market.

18 33. Specifically, Ellie Mae refuses to allow DocMagic access to the ePASS  
19 Network, refuses to allow DocMagic to use the open platform SDK to bypass the  
20 ePASS Network, has established a competing product and is contacting DocMagic's  
21 customers to urge them to utilize Ellie Mae's competing product.

22 34. DocMagic is informed and believes, and on that basis alleges, that Ellie  
23 Mae has been successful and/or exhibits a dangerous probability of being successful  
24 in its efforts to monopolize the relevant product market and control prices and harm  
25 competition in the market for mortgage loan closing document preparation services.  
26 DocMagic is informed and believes, and on that basis alleges, that Ellie Mae  
27 presently controls at least 50% of the relevant product market and stands to increase  
28



its monopolistic hold on that market and to harm the market for mortgage loan closing document preparation services through its present anti-competitive course of conduct.

35. Ellie Mae's conduct will continue to cause substantial injury to interstate trade and commerce by precluding competition, forcing competition out of the market and by providing Ellie Mae with sufficient market and monopoly power to control an otherwise competitive market.

36. As a direct and proximate result of Ellie Mae's violations of Section 2 of the Sherman Act, DocMagic has suffered and will suffer monetary damages from Ellie Mae's unlawful conduct in an amount not yet determined. Additionally, DocMagic has incurred and will incur liability for costs and attorneys' fees.

37. DocMagic lacks an adequate remedy at law.

38. By its conduct, Ellie Mae has violated Section 2 of the Sherman Act, 15 U.S.C. § 2, and unless the Court permanently enjoins Ellie Mae's attempts to engage in the monopolization and attempted monopolization activities alleged herein, Ellie Mae's activities will continue to cause irreparable harm to DocMagic -- and to interstate trade and commerce in general.

## **SECOND CLAIM FOR RELIEF**

### **(Violation of the Cartwright Act, Cal. Bus. & Prof. Code §§ 16700 *et seq.*)**

39. DocMagic incorporates the allegations in paragraphs 1 through 36 as if set forth fully herein.

40. This claim is asserted against Ellie Mae under the California Cartwright Act, Cal. Bus. & Prof. Code §§ 16700 *et seq.*

41. Ellie Mae's acts and conduct alleged above have taken place, at least in part, in California, and are directed to the provision of services within the internet-based mortgage loan closing document preparation software industry and in the

relevant product market in California as well as to DocMagic, which has its principal place of business in California.

42. Ellie Mae's conduct violates the Cartwright Act in that, inter alia, it has monopolized and/or attempted to monopolize the relevant product market by the conduct described herein.

43. As a direct and proximate result of Ellie Mae's violations of the Cartwright Act, DocMagic has suffered and will suffer monetary damages from Ellie Mae's unlawful conduct in an amount not yet determined. Additionally, DocMagic has incurred and will incur liability for costs and attorneys' fees.

44. DocMagic lacks an adequate remedy at law.

45. By its conduct, Ellie Mae has violated the Cartwright Act, Cal. Bus. & Prof. Code §§ 16700 et seq., and unless the Court permanently enjoins Ellie Mae's attempts to engage in the monopolization and attempted monopolization activities alleged herein, Ellie Mae's activities will continue to cause irreparable harm to DocMagic -- and to interstate trade and commerce in general.

### **THIRD CLAIM FOR RELIEF**

#### **(Intentional Interference with Contractual Relationship)**

46. DocMagic incorporates the allegations in paragraphs 1 through 43 as if set forth fully herein.

47. DocMagic has had contractual and/or business relationships with various customers within the internet-based mortgage loan closing document preparation software industry for the marketing and distribution of products and services supplied by DocMagic.

48. Ellie Mae has either actual or constructive knowledge of the existence of the contractual or business relationships DocMagic has had with DocMagic's customers.

49. DocMagic is informed and believes, and on that basis alleges, that Ellie Mae intended to interfere with the contractual and/or business relationships DocMagic has had with its customers.

50. By its conduct alleged hereinabove, Ellie Mae has directly and proximately caused interference with DocMagic's contractual and/or business relationships as alleged herein.

51. As a direct and proximate cause of Ellie Mae's conduct, DocMagic has suffered and will suffer monetary damages in an amount not yet determined, but in excess of \$5 million. Additionally, DocMagic has incurred and will incur liability for costs and attorneys' fees.

52. By its acts, Ellie Mae has violated DocMagic's rights and unless Ellie Mae is restrained and enjoined by this Court, Ellie Mae's acts will continue to cause irreparable harm and injury to DocMagic.

53. Each of the acts by Ellie Mae complained of in this cause of action is willful, wanton, malicious, oppressive and in conscious disregard of DocMagic's rights, justifying the imposition of punitive and exemplary damages under California Civil Code § 3294.

#### **FOURTH CLAIM FOR RELIEF**

##### **(Interference with Prospective Economic Advantage)**

54. DocMagic incorporates the allegations in paragraphs 1 through 51 as if set forth fully herein.

55. DocMagic is informed and believes, and on that basis alleges, that Ellie Mae has begun communicating with DocMagic's current and potential customers, and/or others from whom DocMagic could realize economic benefit, and informing them of Ellie Mae's refusal to provide DocMagic access to the ePASS Network and urging such customers current and potential customers to utilize Ellie Mae's

1 competing products and services.

2 56. DocMagic had valid and existing business expectancies with these  
3 customers and others, with a reasonable probability of realizing a financial benefit  
4 therefrom. Ellie Mae knew or should have known of DocMagic's business  
5 expectancies from these customers and others.

6 57. DocMagic is informed and believes, and on that basis alleges, that Ellie  
7 Mae intended to exercise its monopoly power within the relevant product market for  
8 the purposes of interfering with DocMagic's business expectancies so as to deprive  
9 DocMagic of realizing any financial benefit from those expectancies.

10 58. As a direct and proximate cause of Ellie Mae's conduct, DocMagic has  
11 suffered and will suffer monetary damages in an amount not yet determined, but in  
12 excess of \$5 million. Additionally, DocMagic has incurred and will incur liability for  
13 costs and attorneys' fees.

14 59. By its acts, Ellie Mae has violated DocMagic's rights and unless Ellie  
15 Mae is restrained and enjoined by this Court, Ellie Mae's acts will continue to cause  
16 irreparable harm and injury to DocMagic.

17 60. Each of the acts by Ellie Mae complained of in this cause of action is  
18 wilful, wanton, malicious, oppressive and in conscious disregard of DocMagic's  
19 rights, justifying the imposition of punitive and exemplary damages under California  
20 Civil Code § 3294.

21  
22 **FIFTH CLAIM FOR RELIEF**

23 **(Unfair Competition Cal. Bus. & Prof. Code § 17200, et seq.)**

24 61. DocMagic incorporates the allegations in paragraphs 1 through 58 as if  
25 set forth fully herein.

26 62. Defendants' wrongful acts and conduct as alleged hereinabove, constitute  
27 unfair and unlawful competition pursuant to California law.

28



63. Said unfair competition threatens to and will cause great and irreparable injury to DocMagic in that such conduct will result in the diversion from DocMagic of substantial amounts of business. The damages that have been and will be sustained by DocMagic by reason thereof cannot readily be ascertained or calculated, and unless immediate injunctive relief as prayed for herein is granted, the unfair competition will have been completed, rendering ineffective a final judgment. By reason thereof, Plaintiff has no adequate remedy at law for such acts and threatened acts. Accordingly, DocMagic is entitled to preliminary and permanent injunctive relief as prayed for herein.

### **PRAYER FOR RELIEF**

WHEREFORE, DocMagic prays for judgment on its respective claims as follows:

#### **ON THE FIRST CLAIM FOR RELIEF:**

1. For an order that, by the acts complained of herein, Ellie Mae has violated Section 2 of the Sherman Act, 15 U.S.C. § 2;
2. For a preliminary and permanent injunction enjoining Ellie Mae, and its officers, employees, agents, representatives and those persons in active concert or participation with them who receive actual notice of the order by personal service or otherwise, from engaging in conduct that monopolizes or attempts to monopolize the relevant product market for an internet portal providing electronic linkages for mortgage loan closing document preparation services; and
3. For an order awarding DocMagic damages, in an amount to be fixed by the Court in accordance with proof, resulting from Ellie Mae's violations of United States antitrust laws, and further that such damages be trebled.

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1           ON THE SECOND CLAIM FOR RELIEF:

2           4.     For an order that, by the acts complained of herein, Ellie Mae has  
3 violated the California Cartwright Act, Cal. Bus. & Prof. Code §§ 16700 *et seq.*;

4           5     For a preliminary and permanent injunction enjoining Ellie Mae, and its  
5 officers, employees, agents, representatives and those persons in active concert or  
6 participation with them who receive actual notice of the order by personal service or  
7 otherwise, from engaging in conduct that monopolizes or attempts to monopolize the  
8 relevant product market for an internet portal providing electronic linkages for  
9 mortgage loan closing document preparation services; and

10          6     For an order awarding DocMagic damages, in an amount to be fixed by  
11 the Court in accordance with proof, resulting from Ellie Mae's violations of  
12 California antitrust laws, and further that such damages be trebled.

13  
14           ON THE THIRD CLAIM FOR RELIEF:

15          7.     For an order that, by the acts complained of herein, Ellie Mae has  
16 intentionally interfered with the contractual and/or business relationships of  
17 DocMagic;

18          8.     For a preliminary and permanent injunction enjoining Ellie Mae, and its  
19 officers, employees, agents, representatives and those persons in active concert or  
20 participation with them who receive actual notice of the order by personal service or  
21 otherwise, from engaging in conduct that interferes with the contractual and/or  
22 business relationships or DocMagic; and

23          9.     For an order awarding DocMagic damages, in an amount to be fixed by  
24 the Court in accordance with proof, and including punitive and exemplary damages  
25 as appropriate, resulting from Ellie Mae's interference with DocMagic's contractual  
26 and/or business relationships.

ON THE FOURTH CLAIM FOR RELIEF:

10. For an order that, by the acts complained of herein, Ellie Mae has interfered with DocMagic's prospective economic relationships;

11. For a preliminary and permanent injunction enjoining Ellie Mae, and its officers, employees, agents, representatives and those persons in active concert or participation with them who receive actual notice of the order by personal service or otherwise, from engaging in conduct that interferes with DocMagic's prospective economic relationships; and

12. For an order awarding DocMagic damages, in an amount to be fixed by the Court in accordance with proof, and including punitive and exemplary damages as appropriate, resulting from Ellie Mae's interference with DocMagic's prospective economic relationships.

ON THE FIFTH CLAIM FOR RELIEF:

13. For an order that, by the acts complained of herein, Ellie Mae has engaged in unfair competition under California law;

14. For a preliminary and permanent injunction enjoining Ellie Mae, and its officers, employees, agents, representatives and those persons in active concert or participation with them who receive actual notice of the order by personal service or otherwise, from engaging in unfair competition; and

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1 ON ALL CLAIMS FOR RELIEF:

- 2 15. For DocMagic's costs of suit and attorneys' fees;  
3 16. For pre-judgment interest; and  
4 17. For such other relief as the Court deems just and proper.  
5

6 DATED: August 28, 2009

JEFFER, MANGELS, BUTLER &  
MARMARO LLP  
JOEL D. DEUTSCH  
BERNARD R. GANS  
MATTHEW D. HINKS

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10 By: \_\_\_\_\_  
11 MATTHEW D. HINKS  
12 Attorneys for Plaintiff DOCMAGIC, INC.  
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**DEMAND FOR JURY TRIAL**

Pursuant to Rule 38(b) of the Federal Rules of Civil Procedure, Plaintiff hereby demands trial by jury on all issues raised by the Complaint.

DATED: August 28, 2009

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JOEL D. DEUTSCH  
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10  
11 UNITED STATES DISTRICT COURT FOR THE  
12 NORTHERN DISTRICT OF CALIFORNIA  
13

14 DOCMAGIC, INC., a California  
15 corporation,

16 Plaintiff,

17 v.

18 ELLIE MAE, Inc. a California  
19 corporation; and DOES 1 through 10,  
20 inclusive,

21 Defendants.  
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27  
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CASE NO.

**CERTIFICATION OF INTERESTED  
ENTITIES OR PERSONS**

JMBM  
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1 Pursuant to Civil L.R. 3-16, the undersigned certifies that as of this date, other  
2 than the named parties, there is no such interest to report  
3

4 DATED: August 28, 2009

JEFFER, MANGELS, BUTLER &  
MARMARO LLP  
JOEL D. DEUTSCH  
BERNARD R. GANS  
MATTHEW D. HINKS

8 By: MATTHEW D. HINKS  
9 Attorneys for Plaintiff DOCMAGIC, INC.  
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